819.

SUPREME COURT OF THE UNITED STATES.

No. 130.

THE UNITED STATES, APPELLANT,

vs.

JOHN C. McLEMORE,

ON APPEAL FROM THE CIRCUIT COURT UNITED STATES FOR THE DISTRICT OF MIDDLE TENNESSEE.

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J. & G. S. GIDEON, printers.

Pleas at the city of Nashville, on the first Monday, being the day of September, in the year of our Lord one thousand eight hundred and forty-three, and in the sixty-eighth year of the independence of the United States, before the honorable Morgan W. Brown, judge of the courts of the United States for the districts of East, West, and Middle Tennessee.

JOHN C. MCLEMORE and als., comp'ts, vs. THE UNITED STATES, def'ts. } Inj. bill.

Be it remembered, that heretofore, to wit, on the third day of October, 1842, John C. McLemore and als. exhibited their bill of complaint in the circuit court of the United States for the district of Middle Tennessee, in the words following, to wit:

To the honorable the judge of the circuit court of the United States for the district of Middle Tennessee:

The bill of John C. McLemore and Stephen Cantrell, surviving executor of Robert Searcy, dec'd, and surviving executor of George M. Deaderick, dec'd, citizens of the State of Tennessee, filed in said court against the United States of America, respectfully sheweth, that, on the 21 day of June, 1827, the United States of America recovered judgment in the circuit court of the United States for the district aforesaid against the executors of Robert Searcy, dec'd, the executors of George M. Deaderick, dec'd, the administrator and administratrix of John Childress, dec'd, James Jackson, who is now deceased, and whose executors live in Alabama, and your orator, McLemore, for the sum of seventeen thousand and twenty-eight dollars forty-one cents and costs; that various payments have been made on said judgment, until the whole, or nearly the whole, that is due thereon, has been settled, as will be more particularly stated hereafter; that various executions have issued upon said judgment, the last of which issued 10th January, 1842, on which the attorney general of the United States for said district endorsed an instruction to the marshal directing him to collect $2,832 37, with interest thereon at six per cent. per annum from the 24th of August, 1836, that being the balance claimed to be due thereon; and to enjoin the collection of said balance claimed to be due as aforesaid, this bill is filed; that said judgment was recovered in consequence of the defalcation of said Robert Searcy as a public officer of the United States. Your orators state that the following payments have been made on said judgment, for which they have received no credit, to wit, the proceeds of a note, being about 900 dollars, drawn by McLemore and endorsed by Lemuel Donelson; $400 paid by Benjamin Littan to James P. Grundy, attorney general of the United States; the proceeds of a note of John W. Campbell, being $400 paid by McLemore. In addition to the above payments, your orators state that said McLemore has paid on said judgment as follows, to wit,

$1,713, paid to S. B. Marshall, marshal of said district; the proceeds of Litton's note, $1,604; Crawford's note, $500, and Claptan's note, $500; that said Stephen Cantrell, as executor of Searcy, has made various payments on said judgment, sufficient, as your orators believe, to discharge the balance due thereon, or it will have but a small amount, if any, to be paid on said judgment; a more particular account of all these different payments and statement in relation to the same will be furnished hereafter—the same cannot be now furnished, owing to the absence of Stephen Cantrell and of James P. Clark, who have the papers and evidence in relation to the same; that the confusion and difficulty which has arisen in relation to the credits on said judgment, have arisen from the facts that, after the same was obtained, to wit, in the year 1830, Thomas H. Fletcher, the attorney of the United States, who obtained the same, resigned his office, and James Collinsworth, was appointed to succeed him, who resigned his office in 183 , and went to Texas, being then largely in arrear to the Government, and has subsequently died; that William T. Brown was appointed his successor, who held the office but a short time till he resigned, and James P. Grundy was appointed to succeed him, who has also resigned; and, from the foregoing statement, it appears that said judgment has not been credited with the payments aforesaid made to him.

Your orators further state, that Return J. Meigs, the attorney general, who caused said last execution to issue, had no personal knowledge of any of the transactions aforesaid, and therefore was not willing to credit the judgment with any payments not received or acknowledged by the accounting officer at Washington city; that said Meigs has resigned, and John M. Lee has been appointed his successor as attorney general of the United States for said district, and who will, as your orators are informed and believe, renew said execution, and collect the whole balance of $2,832 17, claimed to be due as aforesaid, unless restrained by the mandate of your honor; that your orators believe it will be very difficult to ascertain the true situation of said judgment, and the amount if any due thereon, without a regular account being taken of all the various payments that have been made, when and how made, and by whom; and this cannot be satisfactorily done by any proceeding known to your orators, as they are advised, except by a bill in equity. Your orator, McLemore, states, that he owed Searcy's estate the amount of his payments made by him as aforesaid, amounting in all to $6,003, and he believes he has paid all he owed; and if there should be any balance, which he does not admit, the same will be coming from Searcy's estate, and, in such event, he prays that an account may be taken between him and Searcy's estate, and that his representatives be decreed to pay on said judgment, or to pay your orator, the balance that may be due thereon. To the end, therefore, your orators pray, that the United States of America be made defendant to this bill, and be required to answer the same, by her attorney, for the district aforesaid, the said John M. Lee; and particularly let him answer and say, when was the judgment aforesaid recovered, what payments have been made thereon, and when and

how made, and by whom; what information has he in his possession or power, as to all the different payments; has he any accounts or letters in his possession from any of the officers of the U. S. as to said payments, and, if so, let him produce the same; has he any information in his possession from his predecessors in office as to said payments; and, if so, let him state what it is, or produce the same. And the premises considered, may it please your honors to enjoin the collection of said judgment until the matters herein contained can be heard in equity; that an account be taken of said judgment, and all the payments made thereon, and if nothing is due the plaintiff at law, that said injunction be made perpetual; and that such other and further and different relief be granted complainants as equity may dictate, and the peculiar circumstances of the case may require. And may it please your honor to grant writ of subpœna for defendant, and that process be served on the attorney of the U. S. for said district.

JAMES CAMPBELL,
Sol. for comp'ts.

Whereupon, process of subpœna issued, commanding and returnable to March term, 1843, which was returned "executed."

And on the 7th of March, 1843, John M. Lea, attorney of the United States, filed his answer in the following words, to wit:

The answer of the United States of America, by John M. Lea, attorney of the United States, for the district of Middle Tennessee, to the bill of complaint filed by John C. McLemore and others, complainants, against the said United States of America, respondent:

The said John M. Lea, attorney of the United States for the middle district of Tennessee, saving and reserving to the said United States of America the right to, and benefit of, all and every exception, as well to the form as the matters of said bill of complaint, for answer thereto, or to so much as it is material for him to answer, responds and says, that on the 21st day of June, 1827, the United States of America recovered judgment in the circuit court of the United States, for the district of West Tennessee, for the sum of $\$17{,}028\frac{41}{100}$, and costs of suit, against the executors and sureties of Robert Searcy, deceased, who was, in his lifetime, assistant paymaster in the army of the United States, upon which said judgment, it is true, payments have at various times been made by several of the defendants in said suit. The said John M. Lea further answering says, that he has no personal knowledge whatever of any of the payments alledged to have been made in said bill of complaint, nor has he derived any information relative thereto from his predecessors in office, save what may be gathered from the official papers and correspondence, of all which he intends to make an exhibit. The said John M. Lea further answering says, that he has in his possession a transcript of the account of said Robert Searcy, deceased, with the United States of America, duly certified by the Secretary of the Treasury, by which it appears, that on the 24th day of August, 1836, the balance due the United States amounted to only $\$2{,}832\frac{37}{100}$, numerous pay-

ments having been made on said judgment, all of which will more fully appear by reference to said account, which is hereto annexed, marked exhibit A. He also refers to said account for information as to when, how, and by whom, said payments were made. The said John M. Lea further answering says, he knows of no other payments than those credited in said account, and asks your honor to require strict and satisfactory proof of all others alledged by complainants to have been made in diminution or satisfaction of said judgment. The said John M. Lea further answering says, he knows nothing of any agreement on the part of the United States to receive from complainants notes on other persons as collateral security for, or in satisfaction of, said judgment, except from a voluntary affidavit of complainant McLemore, and he asks your honor to require strict and satisfactory proof of such agreement, and also full and complete evidence that any notes, placed in the hands of his predecessors to be collected and applied in discharge of said judgment, were really and truly collected, and that the money did come to the hands of the district attorneys, with whom said notes were placed for collection. The said John M. Lea having fully answered, submits, that an account be taken, and that execution issue for the balance ascertained to be due the United States of America.

JOHN M. LEA,
Attorney of the United States for the district of Middle Tennessee.

This seventh of March, 1843, appeared before me, Jacob McGavock, clerk, John M. Lea, attorney of the United States for the district of Middle Tennessee, and makes oath, that the matters and things stated in the foregoing answer of his own knowledge are true, *and those matters and things stated in the foregoing answer of his own knowledge are true*, and those matters and things therein stated as of the information of others, he believes to be true.

JOHN M. LEA.

Subscribed and sworn to before me, the date above.
JACOB McGAVOCK, *Clerk.*

JOHN C. McLEMORE and STEPHEN CANTRELL,
vs.
UNITED STATES OF AMERICA.

General Replication.

And complainants say they will aver and prove their bill to be true, certain, and sufficient, and defendant's answer untrue, uncertain, and insufficient, &c., without this, &c.

JAMES CAMPBELL,
Sol. for Comp'ts.

7 *March*, 1843.

March 7, 1843.—Set for hearing on bill, answer, and replication, by consent.

WEDNESDAY, *March* 8, 1843.

This cause came on to be heard before the honorable Morgan W. Brown, judge of the district court of the United States, for the district of Middle Tennessee, &c., and was heard upon the bill, answer, and replication, in the presence of counsel on both sides; on consideration whereof, by consent of parties, the court doth adjudge, order, and decree that it be referred to the clerk and master to ascertain and report the amount of the judgment at law in the pleadings mentioned, with interest thereon, and the different payments that have been made on said judgment, with interest; so as to ascertain the true balances, if any, due upon said judgment, up to the time of taking his report; and in stating the payments, the clerk and master will ascertain the date of the different payments, and by whom and how made, and will make his report in the premises to the next term of this court.

CIRCUIT COURT OF THE UNITED STATES,
For the middle district of Tennessee:

JOHN C. McLEMORE and als., compt's,
vs.
THE UNITED STATES, def'ts.

To the honorable the judges of the circuit court of the United States, for the district of Middle Tennessee, sitting in chancery:

The clerk and master of said court, to whom the above cause stands referred, under a decretal order of said court, made at March term, 1843, with directions that he "ascertain and report the amount of the judgment at law in the pleadings mentioned, with interest thereon, and the different payments that have been made on said judgment, with interest; so as to ascertain the true balance, if any, due upon said judgment up to the time of taking his report; and in stating the payments, the clerk and master will ascertain the date of the different payments, and by whom and how made, and will make his report in the premises to the next term of this court."

The clerk and master reports to the hon. court, that he has taken said account, but that owing to the great length of time since the transaction took place, and the death and removal of most of the parties concerned therein, it is impossible to arrive at a satisfactory result, but as far as I have been able to do so, the schedule accompanying this report shews the result. From which it appears, that the amount of the judgment at law in the pleadings mentioned, with interest thereon to the 20th instant, (the day of taking the account,) amounts to the sum of $33,636 21; and the different payments that have been made on said judgment, with interest to the same time, amounts to the sum of $35,521 27, which overpays the judgment and interest by the sum of $1,895 06.

In taking said account, I have been governed by the payments admitted by the Treasury Department to have been made up to the first of January, 1833, leaving a balance due the Department, at that date, of $2,832 37. The payments made which I have allowed since that date

are as follows, to wit: January first, 1833, John C. McLemore's note for $861, on which suit was brought in this court in favor of the United States against said McLemore, and judgment rendered against him on the 12th of September, 1836, for $1,000 54. A fieri facias was issued on said judgment, and returned, no property found; a capias ad satisfaciendum issued thereon, and was executed on said McLemore, and he was delivered by the marshal of this district to F. R. Rains, sheriff of Davidson county. Said marshal took the receipt of said Rains for the body of said McLemore, which is endorsed on the ca. sa., which is the last step that appears to have been taken in the case. It appears by a letter of H. D. Gilpin, Solicitor of the Treasury, to James P. Grundy, attorney general, that this judgment was on account of the judgment against Searcy's executors. McLemore placed in the hands of James Collinsworth, attorney general, a note (with others) on Benjamin Litton for $1,604 60, due 1st January, 1834, on which note there are two credits in McLemore's handwriting, one on the first of January, 1834, for $1,079 80, and the other for $200, making $1,279 80. This amount is allowed, believing that Collinsworth either received the money, or other notes in lieu thereof. It is possible, that the note of McLemores, sued on as aforesaid, and a note on John W. Campbell for $425, were received by Collinsworth in lieu of the credits on Litton's note, as they amount to about the same sums; but I am not satisfied that that is the case.

On the 10th of August, 1831, John W. Campbell's note, amounting to $425, was paid to Collinsworth, the attorney of the Government. This payment is acknowledged by the Auditor of the Treasury Department.

On the first of January, 1839, James P. Grundy, attorney for the Government, received $422, the balance due on Litton's note, which payments, with interest calculated thereon from the time they were made to the 20th of September, 1843, amounts to the sum of $4,726 21, which overpays the judgment. Interest, $1,895 06.

There is a paper herewith filed, as a part of this report, marked A, which is as follows:

"Memorandum—Searcy.
"Demand vs. Searcy.
"McLemore's statement of credit.
" " order on Collinsworth.
"Benj'n & J. Litton's notes.

"Due first January, 1832 - - - -	$1,604 60
" 1 " 1833 - - - -	1,604 60
" 1 " 1834 - - - -	1,604 60
	$4,813 80
"John C. McLemore and William and L. Donelson's note, due Jan'y 1, 1835 - - - -	1,604 60
	6,418 40

"Deposited in conformity with an agreement by the Treasury."

The foregoing memorandum is all in the handwriting of said McLemore. At the bottom of the paper containing the above memorandum, the following is in the handwriting of Collinsworth, the attorney for the Government:

"United States vs. Searcy. These belong to U. States.
J. COLLINSWORTH."

I have not allowed a credit for the note of McLemore & Wm. & L. Donelson, due 1 January, 1835, for $1,604 60, for the reasons that there is no evidence that the same was paid to the agent of the Government. Of the foregoing payments, McLemore paid $6,238 80, the interest on the different payments from the time they were made, up to the time of taking this account, amounts to $4,070 35, making in all $10,309 15. All the balance of the payments were made by S. Cantrell, ex. of Robert Searcy, or Thomas Crutcher, trustee, as appears by copies of the receipts herewith filed. From the affidavits of Stephen Cantrell and W. Williams, sent to the Treasury Department, (and by consent admitted as evidence in this case,) it appears, that James Collinsworth, district attorney of the U. States, had admitted to them, at different times, in conversation about the judgment in favour of the U. States vs. Searcy's executors, that Jno. C. McLemore had placed in his hands notes to a sufficient amount, if not more than would cover his liability to said Searcy's estate, and that he had collected the same.

Respectfully submitted.

JACOB McGAVOCK, *Clerk.*

September 20, 1843.

THE UNITED STATES OF AMERICA,
vs.
SEARCY'S executors and securities. } Ex.

DR. *Robert Searcy, late district paymaster, in acc'nt with the U. S.*

		To amount of judgment, 21 June, 1827, -	-	$ 17,028 41
		" interest till 20 Sept'r, 1843, 16 years, 3 months, 29 days, - -	-	16,597 80
				$ 33,626 21
1828	May 3,	Cr. by payment to Tho. H. Fletcher, - -	1,283 62	
		" " interest till 20 Sept'r, 1843, 15 years, 4 months, 17 days, - - -	1,184 00	
"	July 8,	" " payment to Tho. H. Fletcher, - -	519 25	
		" " interest till 20 Sept'r, 1843, 15 years, 2 months, 12 days, - - -	473 33	
"	July 18,	" " payment to Tho. H. Fletcher, - -	1,940 68	
		" " interest till 20 Sept'r, 1843, 15 years, 2 months, 2 days, - - -	1,766 05	
"	July 24,	" " payment made to Tho. H. Fletcher, -	498 33	
		" " interest till 20 Sept'r, 1843, 15 years, 1 month, 26 days, - - -	455 34	
"	Oct. 28,	" " payment made to Tho. H. Fletcher, -	960 00	
		" " interest till 20 Sept'r, 1843, 14 years, 10 months, 22 days, - - -	857 92	

ACCOUNT—Continued.

1828	Nov. 10,	Cr. by payment made to Tho. H. Fletcher, -	715 19	
		" " interest till 20 Sept'r, 1843, 14 years, 10 months, 10 days, - - -	637 54	
1829	Jan'y 15,	" " payment made to Tho. H. Fletcher, -	304 60	
		" " interest till 20 Sept'r, 1843, 14 years, 8 months, 5 days, - - -	267 77	
"	Jan'y 24,	" " payment made to Tho. H. Fletcher, -	498 34	
		" " interest till 20 Sept'r, 1843, 14 years, 7 months, 26 days, - - -	437 91	
"	Jan'y 26,	" " payment made to Tho. H. Fletcher, -	286 67	
		" " interest till 20 Sept'r, 1843, 14 years, 7 months, 24 days, - - -	251 39	
"	April 6,	" " payment made to Tho. H. Fletcher, -	1,273 76	
		" " interest till 20 Sept'r, 1843, 14 years, 6 months, 14 days, - - -	1,110 48	
"	June 12,	" " payment made to James Collinsworth, -	1,163 50	
		" " interest till 20 Sept'r, 1843, 14 years, 3 months, 8 days, - - -	995 92	
"	June 24,	" " payment made to James Collinsworth, -	1,027 75	
		" " interest till 20 Sept'r, 1843, 14 years, 2 months, 26 days, - - -	877 40	
"	Oct. 22,	" " payment made to James Collinsworth, -	1,920 00	
		" " interest till 20 Sept'r, 1843, 13 years, 10 months, 28 days, - - -	1,602 56	
1831	Oct. 28,	" " payment made to James Collinsworth, -	200 00	
		" " interest till 20 Sept'r, 1843, 11 years, 10 months, 22 days, - - -	142 73	
1832	Jan'y 1,	" " payment made to James Collinsworth, -	500 00	
		" " interest till 20 Sept'r, 1843, 11 years, 8 months, 20 days, - - -	351 67	
"	Sep. 3,	" " payment made to James Collinsworth, -	1,669 49	
		" " interest till 20 Sept'r, 1843, 11 years and 17 days, - - - -	1,166 27	
1833	Jan'y 1,	" " payment made to James Collinsworth, -	2,104 60	
		" " interest till 20 Sept'r, 1843, 10 years, 8 months, 20 days, - - -	1,351 00	
1834	Jan'y 1,	" " payment made to Collingsworth, - -	1,279 80	
		" " interest till 20 Sept'r, 1843, 9 years, 8 months, 20 days, - - -	756 08	
1833	Jan'y 1,	" " payment made to Collinsworth, - -	861 00	
		" " interest till 20 Sept'r, 1843, 10 years, 8 months, 20 days, - - -	553 91	
1839	Jan'y 1,	" " payment made to J. P. Grundy, - -	422 00	
		" " interest till 20 Sept'r, 1843, 4 years, 8 months, 20 days, - - -	119 58	
1831	Aug. 10,	" " payment made to Collinsworth, - -	425 00	
		" " interest till 20 Sept'r, 1843, 12 years, 1 month, 10 days, - - -	308 84	
				$35,521 27
		Amount overpaid, - -	–	$1,895 06

THE UNITED STATES OF AMERICA,
vs.
SEARCY'S EXECUTORS AND SECURITIES. } Exception.

The United States of America, by their attorney, except to the following items of the report of the clerk and master filed in this cause.

1st. To the credit of $1,279 80, alledged to have been paid on the first of January, 1834, to James Collinsworth, district attorney. There is no evidence before the clerk and master that this sum was ever paid, a note made by Litton for $1,604 $\frac{60}{100}$, due 1 Jan'y, 1834, was deposited by one of the defendants, McLemore, with Collinsworth, as collateral security for payment of the judgment in favor of U. S. against Searcy's executors and securities; upon this note there are indorsed in the hand writing of McLemore, after the note became due, credits to the amount of $1,279 80; upon this slight evidence the clerk *presumes* that cash to that amount was paid, or notes on solvent men deposited with the attorney general, and allows the same as a credit; interest any how ought only to be charged from 1 Feb'y, 1834. 2d. To the item of $861, allowed as a credit, and alledged to have been payed to the attorney general on the first of Jan'y, 1833, judgment was rendered 12 Sep., 1836, in favor of the U. S. vs. McLemore; on this note execution issued and was returned "nulla bona." McLemore was afterwards taken with a *ca. sa.* his body delivered to the sheriff of Davidson county, and as far as we can see no farther steps were taken. Is this a payment of so much of the judgment vs. Searcy's executors and securities? The judgment against McLemore was only collateral security, and McLemore was also one of Searcy's securities. It was McLemore's duty to pay the judgment, and no negligence of the attorney general in collecting it could be ground for relief. McLemore could not be heard to say, you neglected to collect money from me on the judgment held as collateral security; therefore, I am discharged on my direct liability. Further, there is not a particle of evidence that one cent was ever paid on the judgment vs. McLemore.

JOHN M. LEA, *District Attorney.*

In the case of John C. McLemore, against the United States, John Catron states, that he was in October, 1822, appointed administrator of the estate of John Childress, and is so now; that said Childress was one of the securities of Robert Searcy, as paymaster of the troops, in which capacity said Searcy was sued as a defaulter, as was the administrator of Mr. Childress, appointed first and succeeded by me. Mr. Searcy died, and Stephen Cantrell was his executor or administrator; the suit progressed for years; I attended to it as counsel in the defence with great care and diligence, and finally a judgment was had against Mr. Searcy's administrator, and against part of the securities, for some $17,000. None was taken against me. Arrangements were made to pay the judgment against Searcy's estate, by selling property and collecting the proceeds for the benefit of the government. The property was sold, and the notes to cover the judgment deposited in the hands of James Collinsworth, the attorney of the United States for this district, as Stephen Cantrell, James Jackson, and Mr. Collinsworth, informed me. Mr. Childress' estate was still responsible on Mr. Searcy's bond. I from time to time inquired of Mr. Collinsworth how the matter stood, and kept an eye upon it. So I frequently had conferences with Stephen Cantrell and

James Jackson on the subject. Not long before Mr. Collinsworth went out of office, I applied to him for distinct information on the subject, as I was about distributing the last of the estate of Mr. Childress, without security against any debts that might come against the estate, informing Mr. Collinsworth of my situation and motives, as I now recollect. He well knew my situation, and that of Mr. Childress' representatives. Mr. Collinsworth stated to me, the judgment was settled and the securities discharged, and that I need give myself no further trouble, as administrator of Jno. Childress, about the responsibility on Mr. Searcy's bond. How the judgment had been settled Mr. Collinsworth did not say, but he and I understood each other perfectly, that it was through the means placed in his hands as attorney of the United States, as my enquiry of him was, whether the notes deposited had been made available in discharge of the judgment. I gave myself no farther trouble afterwards, in regard to my responsibility as administrator.

J. CATRON.

The following is taken from a letter from Peter Hagner, auditor, to Albion K. Parris, esq., of the 13th of November, 1840.

"It will be seen from the affidavit of Stephen Cantrell and Wello Williams, dated 17 June, 1840, that James Collinsworth, district attorney of the United States for West Tennessee, had admitted to them at different times, in conversation about the judgment in favor of the U. States vs. Searcy's executors, that John C. McLemore had placed in his hands notes to a sufficient amount, if not more, than would cover his liability to said Searcy's estate, and that he had collected the same."

The President of the United States of America, to the marshal of West Tennessee district, greeting:

You are hereby commanded to take John C. McLemore, a citizen of the State of Tennessee, if he be found within your district, and him safely keep, so that you have his body before the judges of the circuit court of the United States, in the 7th circuit, for the district of West Tennessee, at Nashville, on the first Monday in September next, then and there to answer the United States of America in a plea, that he render to them eight hundred and sixty-one dollars, with interest, from the first of November, 1832, which he owes, and from them detains, to their damage five hundred dollars, and have then there this writ.

Witness, Joseph Story, esq., associate justice of the Supreme Court of the United States, this first Monday in March, in the year 1836, and of the independence of the United States the sixtieth.

N. A. McNAIRY, *Clerk.*
By P. HAY.

Issued August 6th, 1836.

UNITED STATES OF AMERICA,
District of West Tennnesse, 7th Circuit.

Circuit Court of the United States, rules, 1836.

The United States of America, by attorney, complain of John

C. McLemore, in custody of the marshal, &c., of a plea that he render to them the sum of eight hundred and sixty-one dollars, which to them he owes, and from them detains. For that whereas, heretofore, viz., on the 29th day of October, 1831, in the district aforesaid, the said John C. McLemore, who is a citizen of said district, by his certain writing obligatory of that date, sealed with his seal, and to the court now here shown, bound himself, and promised, on the first day of January, 1833, to pay Lemuel Donelson or order, eight hundred and sixty-one dollars, with lawful interest from the first day of November then next, at the office of discount and deposit of the Bank of the United States, at Nashville, for value received, and then and there delivered said writing obligatory to said Donelson; and the said Lemuel, afterwards, viz., on the day and year last aforesaid at the district aforesaid, endorsed and delivered said writing obligatory to the plaintiff; yet the said defendant, although often requested so to do, has not as yet paid said plaintiff said sum of money, with interest as aforesaid, nor any part thereof, but to pay the same has hitherto wholly failed, and refused and still refuses, to the plaintiff's damages five hundred dollars, and therefore they sue, by James P. Grundy, attorney for the United States of America, for the district of West Tennessee.

MONDAY, *September 12th*, 1836.

The plaintiffs, by their attorney, appear, and a judgment by default having been entered in this cause on this day, and no motion having been made to have the same set aside, it is therefore considered by the court that the said default be affirmed, and the plaintiffs recover of the defendant the debt of eight hundred and sixty-one dollars, in the declaration mentioned, and the further sum of one hundred and thirty-nine dollars and thirty-four cents, the damages sustained by reason of the detention thereof, and their costs in this behalf expended.

The President of the United States of America, to the marshal of West Tennessee district, greeting:

You are hereby again commanded to take John C. McLemore, if to be found within your district, and him safely keep, so that you have his body before the judges of the circuit court of the United States in the 8th circuit, for the district of West Tennessee, at Nashville, on the first Monday in September next, then and there to satisfy and render to the United States of America, one thousand dollars and thirty-four cents, for debt and damages, and fifty-three and one-third cents for costs, the fee herein endorsed; which the said United States, lately in our said court, recovered against him for debt, dameges, and costs aforesaid; and have then there this writ.

Witness, Roger B. Taney, esq., chief justice of the Supreme Court of the United States, this first Monday in March, in the year 1838, and of the independence of the United States the sixty-second.

N. A. McNAIRY, *Clerk.*
By P. HAY.

Issued 3d April, 1838.

Judgment rendered 29th September, 1836, debt and decree $1,000 34, costs 53½.

Came to hand same day issued.

S. B. MARSHAL, *M. W. T.*

Executed upon the body of John C. McLemore, and delivered him to the sheriff of Davidson county, as per his receipt hereon, 3d September, 1838.

S. B. MARSHAL, *M. W. T.*

Received of S. B. Marshall, marshal of the United States for the district of West Tennessee, the body of John C. McLemore, under service of the within ca. sa. founded upon a judgment rendered the 29th of September, 1836, for debt, and damages, and costs, to be safely kept until he shall satisfy and pay the same, or is otherwise discharged according to law.

Witness my hand and seal, this 23d August, 1838.

F. R. RAINS, *Sheriff.*

MONDAY, *November 20th*, 1843.

JOHN C. MCLEMORE & als.
vs.
THE UNITED STATES.

This cause came on further to be heard, and was heard upon the report of the clerk and master, taken in pursuance of an interlocutary decree heretofore pronounced in this cause, and the evidence adduced in support of said report, and the exceptions filed by the defendant's counsel to said report, and was argued by counsel; and upon a full hearing of the whole matter, the court is satisfied, and so declare, that the judgment has been paid.

Whereupon the court doth adjudge, order, and decree, that the injunction granted complainants be made perpetual, and that a satisfaction of said judgment at law be entered on the execution docket, and that the complainants at law go hence, and that the United States pay the costs in this behalf expended, &c. From which decree, the said defendants, by John M. Lea, attorney of the United States for the district of Middle Tennessee, prays an appeal to the Supreme Court of the United States, held at Washington, which is granted him.

Copy.

TREASURY DEPARTMENT,
3d Auditor's Office, 13 *Nov.*, 1840.

Sir: I transmit herewith two letters addressed to me by the Solicitor of the Treasury, one dated 28 July, and the other dated 9 November, 1840, together with the documents which accompanied said letters, and upon which documents certain credits are claimed for the account of Robert Searcy, as late district paymaster.

As I understand the subject, after a careful examination of all the

papers, a credit is claimed of two notes, executed by Benjamin and Joseph Litton, on the 11th of November, 1830, for the sum of $1,604 60 each, and amounting together to the sum of - - $3,209 20
Also for the amount of a note executed by John W. Campbell, and supposed to have been for - - 500 00

Amounting together to $3,709 20

For the views heretofore taken by me of the Messrs. Litton's notes, I would refer you to a letter from this office to W. B. Lewis, esq., dated the first of Sept., 1836, and which is among the papers herewith transmitted; and also to a letter addressed by me to the Solicitor of the Treasury on the 30 of July last, and which will be found recorded on pages 329, 330, and 331 of letter book No. 89, herewith transmitted.

It will be seen from the receipt of James Collinsworth, (who was at the time district attorney,) that he received from John C. McLemore three notes, executed by Benjamin and Joseph Litton on the 11th of November, 1830, for $1,604 60 each; and it will also be seen from the letters of Major Lewis and the Solicitor of the Treasury, as above referred to, that it was my opinion that Mr. Searcy's account had had the benefit of two of said notes. The only additional evidence furnished in respect to the Messrs. Litton's notes; since the 30th of July last, (the date of my letter to the Solicitor of the Treasury,) is an affidavit of Wello Williams, dated 10th of October, 1840, and the purport of which is to show, that the payment made by John C. McLemore on the 3d of Sept., 1832, to J. B. Marshall, who was at the time United States marshal for West Tennessee, was not, as I have heretofore attempted to show, the proceeds of principal and interest of one of the Messrs. Litton's notes. This affidavit of Mr. Williams has failed to convince me that the payment to Mr. Marshal was not the principal and interest of the Messrs. Litton's note that became due on the first of January, 1839. It will be seen from the affidavit of Stephen Cantrell and Wello Williams, dated 17 June, 1840, that James Collinsworth, district attorney of the United States for West Tennessee, had admitted to them "at diffe-
"rent times, in conversing about the judgment in favor of the U. States
"vs. Searcy's ex'rs, that John C. McLemore had placed in his hands
"notes to a sufficient amount, if not more, than would cover his liabili-
"ty to said Searcy's estate, and that he had collected the same." Now if Mr. McLemore had placed in the hands of Mr. Collinsworth notes sufficient in amount to cover his liability to the U. States on account of Mr. Searcy's debt, it can hardly be supposed that he would, on the 3d of September, 1832, have paid the principal and interest of the Messrs. Litton's note that became due on the first of January, 1832, without requiring the surrender of said note to him, or of having it placed under his control. After a careful examination of the subject, I am still of opinion that Mr. Searcy's account has had the benefit of the two notes of the Messrs. Litton's, that became due on the first of January, 1832, and first of January, 1833.

In regard to the note of the Messrs. Littons, that became due on the first of January, 1834, I am of opinion that Mr. Searcy's account is entitled to credits for the $422, which James P. Grundy, district attorney, admits has been paid to him on said note; and also for the payments that were made to district attorney James Collinsworth on account of that note. I am further of opinion that Mr. Searcy's account is entitled to credit for $443 06, the principal and interest of John W. Campbell's note for $425, dated the 10th of August, 1831, and which sum of $443 06 was paid to district attorney James Collinsworth.

As it appears from Benjamin Litton's affidavit, dated the 25 of September, 1840, that he has now in his possession the note on which the final payment of $422 was made to Mr. Grundy, I think it will be best to make no statement of Mr. Searcy's account, until a statement is obtained from Mr. Litton of the payments that were made on said notes to Mr. Collinsworth. A correct statement of Mr. Searcy's account cannot be made in the absence of evidence of the amount that was received by Mr. Collinsworth on the note. It is supposed that Mr. Litton, if not disposed to part with the original, would have no objection to furnish a copy of the note, and the endorsement of payments thereon; and to which copy it is desirable that he should make oath, as to its being a true copy of the original. All the papers that accompanied the Solicitor's letters of the 28 July, and 9 of November, 1840, are herewith transmitted for your decision thereon.

I am, &c.

(Signed) PETER HAGNER, *Aud.*

ALBION K. PARRIS, esq.,
Second Compt'r of the Treasury.

TREASURY DEPARTMENT,
2 *Compt'r Office*, *Nov.* 17, 1840.

A careful examination of all the papers referred to in this case, has failed to convince me that Searcy's account has not in fact been substantially credited with the first note mentioned in Collinsworth's receipt, which note became payable January 1, 1832.

I do not, therefore, *overrate* the auditor upon that point.

Signed, ALBION K. PARRIS,
Comptroller.

Rec'd of John C. McLemore the following notes as collateral security in the case of the United States vs. Searcy et al., which, when collected, are to be applied to the payment of that judgment.

One on Benjamin and Joseph Litton, dated 11 November, 1830, and payable on 1 January, 1832, for $1,604 60, sixteen hundred and four dollars sixty cents.

One other note of the same date, executed by the same parties, due 1 January, 1833, for the same amount, $1,604 60.

One other of the same date, and drawn by the same persons, and for the same amount, $1,604 60, due the first of January, 1834.